

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEE T. NEWELL,

Defendant.

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CASE NO. 8:08CR163

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Report and Recommendation (Filing No. 44) issued by Magistrate Judge F.A. Gossett recommending that the motion to suppress (Filing No. 16) filed by the Defendant, Lee T. Newell, be denied. No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

The Defendant seeks an order suppressing evidence seized and statements made as a result of: a stop; detention; searches of the Defendant's vehicle, residence and person; and questioning. Judge Gossett issued oral findings of fact and conclusions of law, concluding: the Defendant, Lee T. Newell, was the subject of an investigative detention; the baggie in Newell's pocket was in plain view and therefore lawfully seized; the seizure of the contraband from Newell's pocket provided probable cause for Newell's arrest; other evidence on Newell's person fell within the inevitable discovery doctrine; Newell was Mirandized and voluntarily and knowingly waived his *Miranda* rights and voluntarily gave statements; Newell voluntarily consented verbally and in writing to the search of his residence; and a third party with authority to consent also consented to the search of Newell's residence.

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3, the Court conducted a de novo review of the record. The Court read the parties' briefs (Filing Nos. 17, 32) and the transcript (Filing No. 47). The Court also viewed the evidence. (Filing No. 43.) Because Judge Gossett fully, carefully, and correctly applied the law to the facts, the Court adopts the Report and Recommendation in its entirety.

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 44) is adopted in its entirety; and
2. The Defendant's motion to suppress (Filing No. 16) is denied.

DATED this 8th day of December, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge